

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1134 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT

Versus

DINESHBHAI MAGANBHAI PATEL

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Appearance :

MR IM PANDYA APP for Appellant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 13/06/2007

ORAL JUDGMENT : (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. This Criminal Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by Additional Sessions Judge, District Banaskantha at Palanpur on 1st of March, 2005, in Special Case No. 71 of 2003, whereby the present respondent, being accused of the said Sessions Case, came to be acquitted by the Trial Court for the offences punishable under Sections 332, 323, 504, 506(2) of the Indian Penal Code as well as for the offence punishable under Section 3(1) (10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 According to prosecution case, the incident occurred on 3rd of December, 2002. Complaint of which came to be filed by Complainant Manguben Nagabhai Kavasva on 7th of December, 2002 before Bhildi Police Station. According to the complaint filed, complainant Manguben was serving as teacher in primary school situated at village Gogadhani, Taluka Deesa. Head Master of the said school was transferred else where and next senior teacher refused to be the Head Master and thereafter next senior teacher accused Dineshbhai

Maganbhai Patel took the charge of Head Master. During his tenure as In-charge Head Master, behaviour of the accused was not proper and according to the complainant she was senior most teacher and, therefore, applied to the TDO to designate her as In-charge Head Master. In pursuance of the order passed by the TDO on 4th of May, 2002, complainant took the charge of Head Master of the said School from the accused and from that incident the accused had enmity with the complainant. Accused was instigating other teachers also against the complainant. On 3rd of December, 2002 at about 11.15 hours the complainant Manguben was sitting in her office and a prayer was being offered in the school by the students. Other teachers were also attending the prayer. The accused came to sign muster roll and was sitting in the office of the complainant. At that time, complainant discussed one leave report preferred by the accused, in which the details were incomplete. Complainant inquired about the details but accused excited and started giving abuses to the complainant and told that she was nobody to inquire anything and seized his leave report from the table of the complainant and had torn the same. Thereafter the accused gave a slap on the face of the complainant and got out of the office. Hearing this commotion, thereafter other teachers came in the office of the complainant and since on account of slap given by the accused, cheek of the complainant was reddened,

the other teachers asked about the same. The accused stated that he had not slapped the complainant but her cheek may be naturally red. On the next day accused had been on leave. The complainant filed one application about this incident to TDO at Deesa and the TDO, Deesa, instructed the complainant to file complaint and hence the complaint was given by the complainant which was registered as CR No. I-68 of 2002 at Bhildi Police Station. Investigation was carried out by PW-3 Vaghubhai Dalabhai, ASI of Bhildi Police Station and he recorded the statements of the witnesses and draw a panchnama of scene of offence. He arrested the accused and filed a charge sheet in appropriate court and since the case was required to be tried by the Special Court, the same was committed to the Court of Sessions. Vide Exhibit-7 on 18th of January, 2005, a charge was framed against the accused by the Special Judge and the accused pleaded not guilty. Therefore, the prosecution examined in all three witnesses i.e. PW-1 complainant Manguben Nagabhai at Exhibit-9; PW-2 Sunitaben Prabhudas Yadav at Exhibit-14 and PW-3 Vaghubhai Dalabhai, ASI and Investigating Officer at Bhildi Police Station at Exhibit - 17. The prosecution also tendered on record the documents like complaint at Exhibit-11, application preferred by the complainant to TDO at Exhibit – 12, certificate of caste at Exhibit-15, panchnama of scene of offence at Exhibit – 18, etc. In a statement under Section 313, the accused stated that he was involved in a false

case and that he was innocent. After hearing both the parties, the learned Trial Judge came to the conclusion that the case was not proved beyond doubt by the prosecution and, hence, this Appeal.

3 Learned APP Mr. I.M. Pandya submitted vehemently that the Trial Judge erred in acquitting the accused because there was no reason to disbelieve the complainant, though no other witness is examined, it is proved through the evidence of the complainant that the accused behaved in a manner insulting the caste of the complainant and delivered a slap and threat to kill. The appreciation of evidence undertaken by the Trial Judge is erroneous as minor contradictions would not affect the prosecution case. It is submitted that the case requires consideration.

4 We have called for the Record and Proceedings from the Trial Court and we are also assisted by extra copies of the evidence and documents as provided by the learned APP. At this stage, we have carefully gone through the Record and Proceedings of the Trial court and the evidence recorded during trial. We have considered each aspect of the case carefully and have scrutinized the evidence with reference to reasonable and broad probabilities of the case.

5 Considering the evidence recorded by the Trial Court, it is required that the same may be re-appreciated by us. PW-1 Manguben complainant is examined vide Exhibit-9 and she stated that the incident occurred on 3rd of December, 2002 and she was Principal – Teacher. Before that the accused was the Principal Teacher and she had taken charge from the accused. Accused had stated that the complainant had no capacity to run the administration and, therefore, she was required to conduct the administration as per the say of the accused and there were small skirmishes between the accused and the complainant about the administration of the school. On 2nd of December, 2000, accused was on half day leave and on 3rd of December, 2000 accused attended the school. At that time, prayer was being offered in the school. All the teachers were present in the school when accused was sitting in the office and complainant was also sitting in the office. Since there was an error in the leave report of the accused, complainant requested the accused to correct the same as instead of 2000, 2002 was to be corrected. In reply, the accused stated that who was she to instruct him to correct the report. The accused stated that there were eight Patels in the school and nobody was to give any attention to complainant who was Adivasi. The accused alleged that since the complainant was female and belonged to scheduled caste, she attempted to falsely involve the accused. The

accused further uttered that the caste of Bhil was incorrigible and thereafter the accused seized the report and tore it off. Accused thereafter delivered a slap on the face of the complainant and had got out of the office and she called all the teachers from the prayer and informed all the teachers that the accused had slapped her and therefore her cheek had reddened. The accused explained that he had not slapped her and the cheek of the complainant might be naturally red and thereafter according to the complainant she had been to Deesa and she stayed there till evening. On evening the accused came at panchayat office and threatened her to kill. The complainant gave an application to the TDO, who instructed her to give a complaint before the police. Therefore, the complainant offered a complaint and she produced the same at Exhibit 11. The application which she preferred to TDO is produced at Exhibit-12. According to complainant, on that day, 10 teachers were present, and out of them two female teachers were there, named as, Jashiben and Sunitaben. Urmilaben, Minaxiben and Sonalben were also present. She stated that she belonged to Adivasi community and she produced on record the caste certificate at Exhibit-13. She has been cross-examined by the defence in detail.

6 PW-2 Sunitaben Yadav is examined at Exhibit-14 and she stated that since last five years she had been serving as Teacher in

Primary School at Village Gogadhani. The incident occurred before two years. She knew the complainant and accused. At the time of incident, complainant was Head Teacher. The incident occurred at 11.00 a.m. in the office, between complainant and the accused. She was in prayer and heard shouts from the office and noticed that accused and complainant came out of the office. At that time, Manguben told that accused had given her a slap and accused stated that he had not given any slap to the complainant. Accused stated that how the cheek of the complainant had reddened, he did not know. She has been cross examined in which she stated that there were in all 13 rooms in the school and each room is connected with electricity and the school had a common electric meter. The bill of the electricity was being paid by the school. One room in the said school is constructed from the fund collected by the contribution of village persons. In the said room, Head Teacher resided. Complainant did not pay any rent of this room. This is all the evidence of PW-2 Sunitaben Yadav.

7 PW-3 Vaghubhai Dalabhai, Exhibit-17 is ASI who investigated the case.

8 This is all the evidence of the prosecution.

9 The learned Trial Judge came to the conclusion, appreciating this evidence that there was contradiction among the depositions of the complainant and the complaint. The complaint has been given very late i.e. on 7th of December, 2002 when the incident occurred on 03rd of December, 2002. No explanation is offered by the complainant for giving the complaint late by these many days. No medical certificate was produced on record in respect of the complainant. There were no eye witnesses in the case of the incident. The learned Trial Judge also came to the conclusion that the defence theory that on account of dispute about non-payment of rent by the complainant and non-payment of electricity charges the dispute had arisen, appeared to be probable. The insult which accused committed on account of the caste of the complainant, is though deposed by the complainant but such averment has not been made in the complaint. The learned Trial Judge also came to the conclusion that in breach of the mandatory Rules under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, the investigation was carried out by ASI and not by the Officer of the cadre mandated by the Rules and, therefore, the Trial Court acquitted the accused.

10 We have undertaken our independent assessment of the evidence. We found that PW-2 is not helpful to the prosecution to

come to the conclusion and she states only that the complainant and accused came out of the office and Manguben made a complaint that accused had slapped her, but when we appreciated the evidence of the complainant, we found that the averments made in the complaint and in Exhibit-12 an application preferred by the complainant to the TDO, there are contradictions. In deposition, the complainant stated that accused insulted the caste of the complainant while such averments we did not find in the complaint at Exhibit-11. Therefore the charges against the accused in respect of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 could not sustain. The complainant also admitted in Exhibit-12 that there was no reference that the accused torn his leave report. Thus when the say of the complainant is doubtful and when she has not taken any treatment or no medical certificate was produced on record, in the circumstances as mentioned above, it is very difficult to believe that the incident had occurred as deposed by the complainant. On account of contradictions which are major in nature between the complaint and the deposition of the complainant as to allegations for the offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 it is difficult to believe the story that the accused slapped the complainant. The whole incident is doubtful and could not be said to have proved beyond doubt. Enmity between the complainant and the accused was

put up by the defence for filing false complaint by the complainant. There is no explanation at all by the complainant for filing the complaint late by four days when on very next day she had applied to the TDO. In these circumstances, mere say of the complainant, on whose deposition, the whole case hinges fall short to prove the guilt of the accused beyond doubt.

11 Over and above, we do not find any fault with the reasoning given by the Trial Court for acquitting the accused. We also do not find any fault in appreciation of evidence undertaken by the Trial Court though we do not subscribe to the view taken by the trial court that since the investigation was undertaken by the ASI and not by the Officer of the cadre as mandated by the Rules, the whole investigation and trial vitiated and we do not express any opinion on this aspect. However, on appreciation of evidence on facts, we also found that no reliance can be placed on the complainant on account of, firstly, contradictions between the complaint and the deposition and secondly on account of late filing the FIR, for which no explanation was offered by the complainant. With these circumstances it is established that there was enmity between the complainant and the accused as to the charge of the school and with respect to the electricity charges and rent of room, in which the complainant resided. Thus, considering the whole

case, even at this stage, we have no reasons to interfere with the order of acquittal passed by the Trial Judge. This being an Appeal against the acquittal, unless the reasons of acquittal are perverse and unsustainable in law, no interference should be made in the orders of acquittal. We do not find the judgment and order impugned exceptionable and, hence, after complete scrutiny at this stage, following order is passed.

“Leave to Appeal refused. Appeal stands dismissed.”

(J. R. VORA, J.)

(BANKIM .N. MEHTA, J.)